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December 21, 1992

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Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, DC 20554

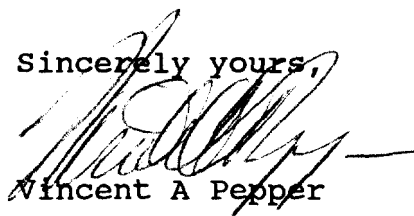
Re: MM Docket No. 87-268

Dear Ms. Searcy:

Transmitted herewith on behalf of GHTV, Inc., SCI Television, Inc. and Busse Broadcasting Corporation are an original and four (4) copies of their Comments in Response to the Third Further Notice of Proposed Rule Making in MM Docket No. 87-268, FCC 92-332, released October 16, 1992. Kindly refer this material to the Commission.

Should you or the staff have any questions, kindly contact the undersigned.

Sincerely yours,


Vincent A. Pepper

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of

Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

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MM Docket No. 87-268

TO: The Commission

**COMMENTS OF GHTV, INC., SCI TELEVISION, INC.
AND BUSSE BROADCASTING CORPORATION IN RESPONSE
TO THIRD FURTHER NOTICE OF PROPOSED RULE MAKING**

GHTV, Inc. ("GHTV")^{1/}, SCI Television, Inc. ("SCI")^{2/} and Busse Broadcasting Corporation ("Busse")^{3/} (and collectively "Commenters"), by their attorneys, hereby submit their comments in response to the Third Further Notice of Proposed Rulemaking in MM Docket 87-268, FCC 92-332, released October 16, 1992 ("Third Further Notice").

1. The Third Further Notice seeks comment at ¶¶28-29 on the matter of whether special consideration should be given to non-commercial broadcasters in meeting the financial requirements

^{1/} GHTV is the corporate parent of the licensees of television stations WTVT-TV, Tampa, Florida; KSBY(TV), San Luis Obispo, California and KSBW(TV), Salinas, California.

^{2/} SCI is the corporate parent of the licensees of television stations WSBK-TV, Boston, Massachusetts; WAGA-TV, Atlanta, Georgia; WJW-TV, Cleveland Ohio; WJBK-TV, Detroit, Michigan; WITI-TV, Milwaukee, Wisconsin; and KNSD-TV, San Diego, California.

^{3/} Busse is the licensee of television stations WWMT-TV, Kalamazoo, Michigan; WEAU-TV, Eau Claire, Wisconsin; KOLN-TV, Lincoln, Nebraska and its satellite KGIN-TV, Grand Island, Nebraska.

imposed by the timetable the Commission has adopted for conversion to Advanced Television Systems ("ATV"). Commenters, who are the licensees of commercial television stations, agree with the Commission that noncommercial television stations play a unique and important role in the nation's television service. Commenters share the concern expressed by commenters representing noncommercial broadcasters that the aggressive timetable the Commission has adopted for ATV conversion could jeopardize the public television service in this country. Commenters will leave it to noncommercial licensees to speak for themselves as to what steps the Commission should take to protect their interests.

2. Commenters respectfully request that whatever relief is granted to noncommercial licensees in terms of relaxed filing or financial requirements should be afforded to commercial licensees as well. The Third Notice notes at ¶28 the statement of Public Television that noncommercial stations "require substantial periods of time to arrange financing of the magnitude required for the ATV transition." The cost of constructing facilities capable of transmitting a "pass-through" signal is at least \$2 million, which does not include the cost of acquiring land and constructing a second transmission tower should that be required. The Commission's Advisory Committee on Advanced Television Systems has concluded that a significant number of stations will be required to construct new transmission towers and/or acquire new sites.

3. It is true, as the Third Notice suggests at ¶28, that noncommercial stations will face difficulty in arranging financing

for ATV conversion. But, it is also true, as Commenters have pointed out previously, that commercial licensees will face extraordinary difficulty in arranging financing for ATV conversion. NAB estimates that the additional debt expense to finance this minimal ATV conversion at \$400,000 per year. There is no economic data to suggest that the conversion to ATV will generate revenue sufficient to cover those costs.

4. It is well documented that lending institutions are less willing to provide funds to the broadcast industry than they once were. Many institutions that were once extremely active in financing broadcasters have now all but abandoned the field. It is equally well documented that the television industry faces extremely difficult economic times. The general downturn in the economy has been exacerbated by increased competition in the video marketplace. The Commission has noted this in its Notice of Proposed Rulemaking ("NPRM") in MM Docket 91-221, FCC 92-209 (released June 12, 1992). The NPRM at ¶ 5 cites the declining audience shares and profits for broadcast television stations and networks. Thus, commercial broadcasters are being required to make a significant economic investment and to take a substantial economic risk at the worst possible time in the history of the television industry.

5. As Commenters have noted previously, they are cognizant of the fact that existing broadcasters will be in the vanguard of bringing ATV service to the public as expeditiously as possible and, within the current financial realities of the television

industry, are willing to accept that burden. They have previously expressed concern about the Commission's timetable for construction of ATV facilities. The Third Report and Order in this proceeding has partially alleviated those concerns by establishing periodic reviews of the Commission's deadlines. Additionally, the separate statements of Commissioners Ervin Duggan and Sherrie Marshall indicate that the Commission is aware of the difficulties and uncertainties the industry faces. Moreover, they also recognize that HDTV is but one of the paths toward improved television service.

6. Commenters pointed out previously that the Commission's requirement of a financial showing in connection with the filing of FCC Form 301 makes perfect sense in the context of an applicant for construction of new facilities or modification of existing facilities. The filing of such an application is an entirely voluntary act. Unlike the ATV applicant who, under the Commission's current proposal, must either file an ATV application or risk losing the capacity to broadcast when NTSC licenses are phased out, the applicant for new or improved facilities files if and only if it make economic sense. If the cost-benefit analysis does not justify filing an application for new or improved facilities, the applicant can wait for the day when such an expenditure is justified. The existing television licensee has no such choice under the ATV conversion procedure.

7. Commenters have pointed out previously that the history of broadcasting teaches us that new technologies have been

introduced first in larger markets and then, as consumer demand increased and economies of scale drove down the cost, these new technologies were implemented in smaller markets and eventually nationwide. The conversion from monochrome to color television provides a perfect parallel. Like ATV, it required licensees to rebuild their studios and transmission plants as consumers were required to purchase new receivers. The Commission, after adopting a standard for transmission of color television, correctly permitted the marketplace to determine the pace of conversion. Color television came first to the largest markets where there were significant numbers of affluent consumers willing to pay the substantial premium for purchase of color television receivers. Eventually, the costs came down to the point that most consumers could afford color receivers and the smallest television stations were able to justify the investment in color television studio and transmission equipment. In a relatively short period of time the marketplace, without interference from the Commission, determined that there would be a total conversion from monochrome to color television.

8. Commenters respectfully submit once again that market forces are adequate to determine the pace at which the conversion to ATV will occur. Market forces are capable of determining whether the conversion will take the form of HDTV transmissions or one or more of the ATV systems Commissioners Duggan and Marshall have suggested.

9. There is a solution that should be applied equally to noncommercial and commercial broadcasters. Commenters respectfully suggest that the Commission modify FCC Form 301 with respect to applications for ATV facilities to require only that a commercial licensee demonstrate that it has prepared a complete business plan such as is required for applicants for new facilities, and is using its best efforts to obtain financing for construction of the proposed facilities as expeditiously as possible. A comparable showing would be required of noncommercial licensees. This approach will prevent a television licensee, whether commercial or noncommercial, from merely sitting on its hands. It would also protect existing commercial and noncommercial licenses against the uncertainties of raising funds to construct ATV facilities. If a licensee could not complete construction within the required time period, for whatever reason (including economic considerations) extensions could be granted. There may, for example, be situations in which a licensee is able to obtain financing, but the debt service could push the station from being profitable into the loss column or, in the case of a noncommercial station, require it to reduce or discontinue service. The Commission would certainly not want to be in the position of requiring a licensee to take action that would result in economic ruin. Even more tragic would be the loss of service that would result if even one commercial or noncommercial television station were to go dark because the licensee could not afford the ATV conversion cost.

10. The Commission will require licensees to surrender their NTSC licenses at the end of the 15-year period during which it is presumed that the conversion to ATV will be complete so that it might recapture the present NTSC spectrum for other uses.^{4/} Commenters reiterate their previous suggestion that the ATV allocation remain paired with the existing NTSC allocation during the entire 15-year conversion period. Thus, an applicant would not run the risk of going to the trouble and expense of resolving all of the problems standing in the way of completing construction only to find that it had lost its ATV allocation.

11. The Commission's plan for implementing ATV service, if allowed to stand, will have disastrous and unintended effects for the public and the industry. Commenters respectfully submit once again that allowing market forces to determine the pace of conversion to ATV is far preferable to having the government's heavy hand dictate choices for consumers. Each and every time a new broadcast technology has emerged the Commission has limited its role to setting the standards and then stepping back to allow the market-

^{4/} As Commenters pointed out in their response to the Second Further Notice of Proposed Rule Making in this proceeding, the VHF spectrum is uniquely suited for broadcast television and not much else. The Commission has not indicated what use, if any, it has in mind for the spectrum that will be vacated. No users have come forward to demonstrate a need or desire for the vacated spectrum. Certainly, there has been no demonstration of a use for the VHF band that would outweigh loss of service that will result if all television stations are packed into the UHF band. This loss will be particularly acute in rural areas that will not be served by ATV stations in the UHF band, but are now served by NTSC stations now operating in the VHF band. These areas are not presently served by cable systems and, even if DBS were to become a reality, it would not be a substitute for the local service that only local broadcasters can provide.

place decide the pace at which the new technology would be implemented. Each and every time the marketplace has performed its function perfectly. ATV should be no different. The natural forces of an orderly and well-informed market are far preferable to the artificial constraints the Commission might impose. The periodic reviews the Commission adopted in the Third Report and Order alleviate many of the concerns Commenters have with regard to the pace of ATV conversion. Commenters believe that further adjustments are required in order to allow noncommercial and commercial broadcasters adequate time to arrange financing for the conversion costs.

For the forgoing reasons, GHTV, Inc., SCI Television, Inc. and Busse Broadcasting Corporation respectfully request that the Commission adopt procedures to relax the financial requirements for ATV conversion and that those procedures be applied in the same manner to commercial and noncommercial licensees.

Respectfully submitted,

GHTV, INC.
SCI TELEVISION, INC.
BUSSE BROADCASTING CORPORATION

By


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Neal J. Friedman
Their Attorneys

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December 21, 1992

CERTIFICATE OF SERVICE

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, hereby certify that a true and correct copy of the foregoing Comments in Response to the Third Further Notice of Proposed Rule Making was served by hand delivery on the 21st day of December, 1992, on the following individuals:

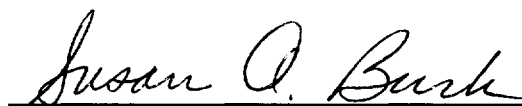
The Honorable Alfred C. Sikes
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The Honorable James H. Quello
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Susan A. Burk